

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN THE MATTER OF THE COMPLAINT

07 CV 3840 (RWS)(DFE)

of

NOTICE OF DEPOSITION

DONJON MARINE CO., INC. as
owner of Tug WILLIAM E. for
Exoneration from or Limitation of
Liability,

Petitioner.

-----x
TO: RUBIN, FIORELLA & FRIEDMAN, LLP
292 Madison Avenue
New York, New York 10017

COUNSELORS:

PLEASE TAKE NOTICE that in accordance with Rule 30 of the Federal Rules of Civil Procedure, testimony will be taken by deposition upon oral examination before a Certified Shorthand Reporter of the State of New York, or other person authorized by the laws of the State of New York to administer oath, with respect to all matters relevant to the subject matter involved in this action, at which time you will please produce the following persons whose testimony is to be taken:

PARTY BEING DEPOSED: Each and every corporate officer, engineer, vessel officer, crew member and each and every other employee of Donjon Marine Co., Inc. who was present at Caddell Dry Dock from the time when the vessel was first delivered to Caddell Dry Dock through and including the date of the accident.

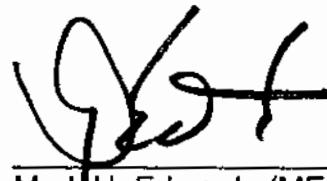
DATE: November 27, 2007

TIME: 10:00 A.M.

PLACE:

GORAYEB & ASSOCIATES, P.C.
100 William Street, Suite 1205
New York, New York 10038

Dated: New York, New York
November 19, 2007



Mark H. Edwards (ME 7106)
GORAYEB & ASSOCIATES, P.C.
Attorney for Respondent
DENNIS KIRBY
100 William Street, Suite 1205
New York, New York 10038
(212) 267-9222

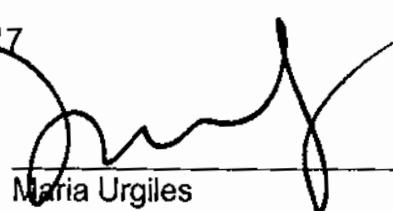
STATE OF NEW YORK
COUNTY OF NEW YORK

SS.: AFFIDAVIT OF SERVICE

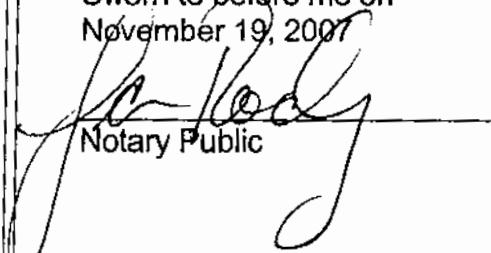
I, Maria Urgiles, being duly sworn, depose and say: I am not a party to the action, am over 18 years of age, and reside in the County of Queens, State of New York.

On November 19, 2007, I served the within NOTICE OF DEPOSITION to the Federal Express office location at 100 William Street, New York, New York, for overnight delivery service on the following attorneys:

RUBIN, FIORELLA & FRIEDMAN, LLP
292 Madison Avenue
New York, New York 10017


Maria Urgiles

Sworn to before me on
November 19, 2007


Notary Public

JANIRA RODRIGUEZ
Commissioner of Deeds, City of New York
No. 1-6659
Certificate Filed in New York County
Commission Expires Jan. 1, 2007

2009

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
IN THE MATTER OF THE COMPLAINT

07 CV 3840 (RWS)(DFE)

of

DONJON MARINE CO., INC. as
owner of Tug WILLIAM E. for
Exoneration from or Limitation of
Liability,

Petitioner.

RULE 30 NOTICE OF DEPOSITION

GORAYEB & ASSOCIATES, P.C.
Attorneys for Respondent DENNIS KIRBY
100 William Street, Suite 1205
New York, New York 10038
(212) 267-9222
FILE NO. 7401 - LL

EXHIBIT D



JANUARY 2007

LOCAL CLIMATOLOGICAL DATA
NOAA, National Climatic Data Center

NEW YORK, NY

LA GUARDIA AIRPORT (KLGA)

Lat: 40° 46'N Long: 73° 52'W Elev (Ground) 11 Feet

Time Zone : EASTERN WBAN: 14732 ISSN# : 0198-3644



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Date	Temperature °F		Deg Days BASE 65°		COOLING		HEATING		WATER EQUIV. FALL.		WATER EQUIV. FALL.		WEATHER		SNOW/ICE ON GND/IN		PRECIPITATION ON GND/IN		PRESSURE (INCHES OF HG)		WIND		SPEED = MPH DIR = TENS OF DEGREES					
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	11	12	13	14	15	16	17	18	19	20	21	22	23
01	56	46	51	17	48	50	14	0	RA BR	0	0.0	1.33	29.85	29.88	3.9	20	8.6	26	18	20	30	0.1	30	0.1	30	0.1	30	0.1
02	52	43	48	14	27	38	17	0	RA	0	0.0	0.00	30.09	30.12	15.3	31	3.0	20	30	30	30	0.2	30	0.2	30	0.2	30	0.2
03	53	39	46	12	27	39	19	0	RA	0	0.0	0.00	30.28	30.31	10.0	24	2.0	20	23	20	23	0.3	20	0.3	20	0.3	20	0.3
04	58	44	51	17	35	44	14	0	RA BR	0	0.0	0.00	30.12	30.15	8.9	23	1.9	20	22	16	24	0.4	20	0.4	20	0.4	20	0.4
05	62	51	57	23	53	55	8	0	RA BR	0	0.0	0.04	29.89	29.93	7.0	20	7.4	20	22	15	22	0.5	20	0.5	20	0.5	20	0.5
06	72*	55	64*	31	50	56	1	0	RA BR	0	0.0	0.04	29.71	29.75	11.6	26	14.1	35	30	28	30	0.6	30	0.6	30	0.6	30	0.6
07	56	46	51	18	31	41	14	0	RA BR	0	0.0	0.15	30.19	30.21	1.4	32	10.6	22	32	28	30	0.7	30	0.7	30	0.7	30	0.7
08	57	40	49	16	37	44	16	0	RA BR	0	0.0	0.19	29.55	29.68	7.7	26	14.9	39	28	31	28	0.8	28	0.8	28	0.8	28	0.8
09	45	37	41	8	20	33	14	0	RA BR	0	0.0	0.00	29.79	29.82	13.9	27	14.8	30	26	30	26	0.9	26	0.9	26	0.9	26	0.9
10	38	31	35	2	14	28	30	0	RA	0	0.0	0.00	30.14	30.17	10.8	31	18.1	35	33	29	32	1.0	32	1.0	32	1.0	32	1.0
11	41	29	35	2	15	28	30	0	RA	0	0.0	0.00	30.53	30.56	6.0	25	9.4	25	28	22	29	1.1	29	1.1	29	1.1	29	1.1
12	50	39	45	12	29	38	20	0	RA	0	0.0	0.00	30.32	30.35	11.3	23	11.4	25	23	21	24	1.2	24	1.2	24	1.2	24	1.2
13	57	46	52	20	44	48	13	0	RA DZ	0	0.0	0.03	30.16	30.19	3.9	24	8.3	17	25	13	26	1.3	26	1.3	26	1.3	26	1.3
14	46	42	44	12	44	43	21	0	RA DZ	0	0.0	0.05	30.18	30.21	8.4	17	8.7	18	16	16	16	1.4	16	1.4	16	1.4	16	1.4
15	51	41	46	14	41	43	19	0	RA DZ	0	0.0	0.02	29.93	29.94	6.4	0.7	6.9	21	0.5	17	0.6	17	0.6	17	0.6	17	0.6	
16	57	25	41	9	24	34	24	0	RA	0	0.0	0.00	29.97	30.01	18.2	32	18.8	37	33	31	34	1.7	34	1.7	34	1.7	34	1.7
17	31	21	26	-6	6	20	39	0	RA	0	0.0	0.00	30.60	30.63	11.8	33	13.2	39	32	31	32	1.8	32	1.8	32	1.8	32	1.8
18	38	30	32	0	22	29	33	0	RA SN BR UP	0	0.0	0.00	30.41	30.46	2.9	11	4.4	15	13	13	13	1.9	13	1.9	13	1.9	13	1.9
19	43	33	38	6	25	33	27	0	SN	0	0.0	0.05	29.80	29.83	13.1	29	13.8	43	30	33	31	3.0	31	3.0	31	3.0	31	3.0
20	35	23	29	-3	11	24	36	0	SN	0	0.0	0.00	29.91	29.92	12.3	31	12.3	26	32	23	32	2.3	32	2.3	32	2.3	32	2.3
21	31	21	26	-6	4	21	34	0	SN	0	0.0	0.00	29.84	29.84	11.8	31	12.3	26	30	22	29	2.4	29	2.4	29	2.4	29	2.4
22	34	28	31	-2	18	29	31	0	SN	0	0.0	0.00	29.76	29.79	4.3	23	5.5	16	22	13	22	2.5	22	2.5	22	2.5	22	2.5
23	38	30	34	2	18	29	31	0	RA SN HZ	0	0.0	0.00	29.61	29.64	3.4	21	8.0	21	31	28	30	2.6	30	2.6	30	2.6	30	2.6
24	40	34	37	5	19	31	28	0	SN	0	0.2	0.02	29.71	29.74	15.4	32	17.3	37	32	29	32	2.9	32	2.9	32	2.9	32	2.9
25	37	27	31	-5	13	25	38	0	SN	0	0.4	0.04	29.91	29.94	10.3	26	11.1	26	27	20	27	3.0	27	3.0	27	3.0	27	3.0
26	24	11*	18*	-14	0	14	47	0	RA	0	0.0	0.00	29.94	29.97	17.8	31	18.6	38	30	28	30	2.6	30	2.6	30	2.6	30	2.6
27	41	22	32	0	14	26	33	0	RA	0	0.0	0.00	29.61	29.64	2.4	34	8.0	21	18	0.3	28	0.3	28	0.3	28	0.3		
28	43	32	34	2	18	29	31	0	RA SN HZ	0	0.2	0.02	29.71	29.74	15.4	32	17.3	37	32	29	32	2.9	32	2.9	32	2.9	32	2.9
29	32	24	28	6	19	31	35	0	SN	0	0.4	0.04	29.91	29.94	10.3	26	11.1	26	27	20	27	3.0	27	3.0	27	3.0	27	3.0
30	37	23	30	-2	13	25	35	0	SN	0	0.4	0.04	29.91	29.94	10.3	26	11.1	26	27	20	27	3.0	27	3.0	27	3.0	27	3.0

HOURLY PRECIPITATION

(WATER EQUIVALENT IN INCHES)

NEW YORK, NY (KLGA)
JANUARY 2007

WBAN # 14732

Date	FOR HOUR (LST) ENDING AT												FOR HOUR (LST) ENDING AT												2400 LST Water Equiv.	
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24		
01	T	0.02	0.08	0.03	0.03	0.17	0.40	0.27	0.17	0.07	0.02	0.1	0.01	0.02	0.03	T								01	1.33	
02																									02	0.00
03																									03	0.00
04																									04	0.00
05																									05	0.04
06	0.04	T																							06	0.04
07																									07	0.04
08	0.15	0.24	0.11	0.20	0.02	0.01	0.10	0.11	0.06	0.04	0.02	0.05	0.07	0.01											08	0.15
09																									09	0.19
10																									10	0.00
11																									11	0.00
12																									12	0.00
13																									13	0.00
14	T	0.01	0.02																						14	0.03
15	0.01																								15	0.05
16	T																								16	0.02
17																									17	0.00
18																									18	0.00
19																									19	0.09
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21																									21	0.02
22																									22	0.00
23																									23	0.00
24																									24	0.00
25																									25	0.00
26																									26	0.00
27																									27	0.00
28	0.01	0.01	0.02																						28	0.08
29	0.02																								29	0.02
30																									30	0.04
31	0.04																								31	0.04

* Indicates sum of Hourly and Daily disagree.

MAXIMUM SHORT DURATION PRECIPITATION (See Note)

Time Period (Minutes)	5	10	15	20	30	45	60	80	100	120	150	180
Precipitation (Inches)												
Ending Date												
Ending Time (Hr/Min)												
Date and time are not entered for TRACE amounts.												

NOAA, National Climatic Data Center

PAGE 2

Note : The hourly and daily precipitation totals are printed in the last 2 columns and highlighted in red when they disagree. NWS does not edit ASOS hourly values but may edit daily and monthly totals. Hourly, daily, and monthly totals are printed as reported by the ASOS site.

REFERENCE NOTES & SUPPLEMENTAL SUMMARIES

* = Extreme for the month (last occurrence if more than one).
T = Trace precipitation amount.
+ = also occurs on earlier date.

FG+ = Heavy fog, visibility .25 miles or less.
BLANK entries denote missing or unreported data.

Resultant wind is the vector sum of the wind speeds and directions divided by the number of observations.

Wind direction is recorded in tens of degrees (2 digits) clockwise from true north. '00' = calm, 'VR' = variable.

Precipitation is for the 24-hour period ending at the time indicated in the column heading.

Water Equivalent of snow on the ground is reported only when the depth is 2 or more inches.

NORMALS ARE FOR THE YEARS 1971-2000

WEATHER NOTATIONS

QUALIFIER	WEATHER PHENOMENA			MONTHLY AVGS	SUNSHINE (Minutes)
	PRECIPITATION	OBSCURATION	OTHER		
BC	DZ Drizzle	BR Mist	DS Duststorm	26	10.00
BL	Blowing	GR Hail	DU Widespread Dust	27	8.00
DR	Low Drifting	CS Small Hail and/or Snow Pellets	FC Funnel Cloud	28	10.00
FZ	Freezing	IC Ice Crystals	+FC Tornado Waterspout	29	1.50
MI	Shallow	PL Ice Pellets	PO Well-Developed Dust/Sand Whirls	30	5.00
PR	Partial	RA Rain		31	10.00
SH	Showers(s)	SG Snow Grains	FY Spray		1.00
TS	Thunderstorm	SN Snow	SA Sandstorm		3.00
VC	In the Vicinity	UP Unknown Precipitation	V/A Volcanic Ash		10.00
			GL Glaze		
Intensity (as indicated on pages 4 to 6):					
+1 = Heavy 1 = Moderate 0 = Light					

NEW YORK, NY JANUARY 2007

Celiometer (30-second) data are used to derive cloudiness at or below 12,000 feet. This cloudiness is the mean cloud cover detected during sunrise to sunset (SR-SS), or midnight to midnight (MN-MN).

Satellite data are used to derive cloudiness above 12,000 feet. Effective Cloud Amount is based on the cloud cover and the transparency of the clouds within the satellite field of view (approx. 31x31 miles).

Sky Condition is based on the sum (not to exceed 8) of the sunrise to sunset cloud cover below and above 12,000 feet. Both ceilometer and satellite data must be present to compute Sky Condition. Clear = 0-2 oktas, Partly Cloudy = 3-6 oktas, Cloudy = 7-8 oktas.

A Heating (Cooling) Degree Day is the difference between the average daily temperature and 65 degrees F. The HDD season begins July 1, the CDD season begins January 1.

Dew Point is the temperature to which the air must be cooled to achieve 100% relative humidity. Wet Bulb is the temperature the air would have if cooled to saturation at constant pressure by evaporation of water into it.

Snow Depth, Snowfall, and Sunshine data may come from nearby sites that the National Weather Service deems Climatologically representative of this site.

ADDITIONAL NOTES:

Station Augmentation-FAA CWD
Lat/Lon: / Elevation:
Distance: 1.2 MI Dir: SSE
Augmented Elements: Temp, Precip, Snow
Equipment: PSY, SRG, Snowboard

Total : Possible :

Percent Possible :

NUMBER OF DAYS WITH :

Clear Partly CLDY Cloudy Missing

MINIMUM VISIBILITY (MILES)

>= 7.0

16

Date	TOTAL MINUTES	PERCENT POSSIBLE	MIN-MAX	MAXIMUM	RESERVED	VISIBILITY (MILES)
0.1	0.2		1.25	10.00		
0.2	0.3		10.00	10.00		
0.3	0.4		10.00	10.00		
0.4	0.5		10.00	10.00		
0.5	0.6		2.00	10.00		
0.6	0.7		2.00	10.00		
0.7	0.8		6.00	10.00		
0.8	0.9		2.00	10.00		
0.9	1.0		10.00	10.00		
1.0	1.1		10.00	10.00		
1.1	1.2		10.00	10.00		
1.2	1.3		7.00	10.00		
1.3	1.4		0.00	8.00		
1.4	1.5		0.12	10.00		
1.5	1.6		8.00	10.00		
1.6	1.7		10.00	10.00		
1.7	1.8		1.50	10.00		
1.8	1.9		1.50	10.00		
1.9	2.0		6.00	10.00		
2.0	2.1		10.00	10.00		
2.1	2.2		9.00	10.00		
2.2	2.3		10.00	10.00		
2.3	2.4		10.00	10.00		
2.4	2.5		5.00	10.00		

OBSERVATIONS AT 3-HOURLY INTERVALS

OBSERVATIONS AT 3-HOURLY INTERVALS

WBAN # 14732												JANUARY 2007												KLGA									
SATELLITE			WEATHER			PRESSURE (INCHES, HG)			TEMPERATURE °F			SKY COVER			SATellite			WEATHER			TEMPERATURE °F			PRESSURE (INCHES, HG)									
HOUR (LST)		VISIBILITY (MILES)	DRY BULB		DEW POINT	WET BULB		RELATIVE HUMIDITY (%)	SPEED (MPH)		DIRECTION	DRY BULB		DEW POINT	WET BULB		RELATIVE HUMIDITY (%)	SPEED (MPH)		DIRECTION	DRY BULB		DEW POINT	WET BULB		RELATIVE HUMIDITY (%)	SPEED (MPH)						
01	SCT	250	10.00	48	37	43	66	11	24	30.20	30.23	01	OVC	018	01	OVC	018	01	OVC	018	01	OVC	018	01	OVC	018	01	OVC	018	01	OVC	018	
04	OVC	100	10.00	49	41	45	74	8	22	30.14	30.16	04	OVC	050	10	OVC	050	10	OVC	050	10	OVC	050	10	OVC	050	10	OVC	050	10	OVC	050	
07	OVC	090	10.00	50	43	47	77	6	23	30.14	30.17	07	OVC	017	11	OVC	017	11	OVC	017	11	OVC	017	11	OVC	017	11	OVC	017	11	OVC	017	
10	OVC	075	10.00	52	45	49	77	9	23	30.14	30.16	10	FEN	045	10	OVC	045	10	OVC	045	10	OVC	045	10	OVC	045	10	OVC	045	10	OVC	045	
13	OVC	080	9.00	56	47	51	72	11	25	30.11	30.14	13	BKN	055	10	OVC	055	10	OVC	055	10	OVC	055	10	OVC	055	10	OVC	055	10	OVC	055	
16	BKN	100	10.00	57	49	53	75	8	25	30.11	30.14	16	BKN	065	10	OVC	065	10	OVC	065	10	OVC	065	10	OVC	065	10	OVC	065	10	OVC	065	
19	OVC	023	10.00	54	47	50	77	7	03	30.20	30.23	19	BKN	075	10	OVC	075	10	OVC	075	10	OVC	075	10	OVC	075	10	OVC	075	10	OVC	075	
22	OVC	020	10.00	SUNRISE: 0714	49	43	46	80	7	07	SUNSET: 1648	30.24	22	FEN	075	10	OVC	075	10	OVC	075	10	OVC	075	10	OVC	075	10	OVC	075	10	OVC	075
01	OVC	016	7.00	SUNRISE: 0715	45	40	43	83	8	08	SUNSET: 1647	30.22	01	SCT	060	10	OVC	060	10	OVC	060	10	OVC	060	10	OVC	060	10	OVC	060	10	OVC	060
04	OVC	005	8.00	SUNRISE: 0715	45	42	44	89	8	06	SUNSET: 1647	30.20	01	SCT	060	10	OVC	060	10	OVC	060	10	OVC	060	10	OVC	060	10	OVC	060	10	OVC	060
07	OVC	012	2.00	SUNRISE: 0715	45	42	44	89	13	05	SUNSET: 1647	30.23	07	FEN	080	10	OVC	080	10	OVC	080	10	OVC	080	10	OVC	080	10	OVC	080	10	OVC	080
10	OVC	003	1.50	SUNRISE: 0715	44	41	43	89	11	05	SUNSET: 1647	30.23	10	BKN	055	10	OVC	055	10	OVC	055	10	OVC	055	10	OVC	055	10	OVC	055	10	OVC	055
13	VV	001	0.00	SUNRISE: 0715	44	42	43	93	9	05	SUNSET: 1647	30.13	13	BKN	055	10	OVC	055	10	OVC	055	10	OVC	055	10	OVC	055	10	OVC	055	10	OVC	055
16	OVC	002	0.50	SUNRISE: 0715	44	42	43	93	7	06	SUNSET: 1647	30.13	16	FEN	065	10	OVC	065	10	OVC	065	10	OVC	065	10	OVC	065	10	OVC	065	10	OVC	065
19	OVC	003	2.00	SUNRISE: 0715	44	42	43	93	3	03	SUNSET: 1647	30.21	19	CIR	NC	10	OVC	NC	10	OVC	NC	10	OVC	NC	10	OVC	NC	10	OVC	NC	10	OVC	NC
22	OVC	005	5.00	SUNRISE: 0715	44	41	43	89	9	05	SUNSET: 1647	30.19	22	CIR	NC	10	OVC	NC	10	OVC	NC	10	OVC	NC	10	OVC	NC	10	OVC	NC	10	OVC	NC
01	OVC	005	3.00	SUNRISE: 0714	43	39	41	86	8	05	SUNSET: 1649	30.19	01	CIR	NC	10	OVC	NC	10	OVC	NC	10	OVC	NC	10	OVC	NC	10	OVC	NC	10	OVC	NC
04	OVC	007	9.00	SUNRISE: 0714	42	38	40	86	14	08	SUNSET: 1649	30.19	04	CIR	NC	10	OVC	NC	10	OVC	NC	10	OVC	NC	10	OVC	NC	10	OVC	NC	10	OVC	NC
07	OVC	004	3.00	SUNRISE: 0714	42	39	41	89	9	08	SUNSET: 1649	30.09	07	SCT	200	10	OVC	200	10	OVC	200	10	OVC	200	10	OVC	200	10	OVC	200	10	OVC	200
10	OVC	004	1.25	SUNRISE: 0714	43	40	42	89	9	05	SUNSET: 1649	30.09	10	SCT	250	10	OVC	250	10	OVC	250	10	OVC	250	10	OVC	250	10	OVC	250	10	OVC	250
13	OVC	002	0.50	SUNRISE: 0714	42	39	41	89	8	05	SUNSET: 1649	29.86	13	CIR	180	10	OVC	180	10	OVC	180	10	OVC	180	10	OVC	180	10	OVC	180	10	OVC	180
16	OVC	002	0.25	SUNRISE: 0714	44	41	43	89	3	VR	SUNSET: 1649	29.88	16	BKN	180	10	OVC	180	10	OVC	180	10	OVC	180	10	OVC	180	10	OVC	180	10	OVC	180
19	OVC	006	6.00	SUNRISE: 0714	50	46	48	86	9	00	SUNSET: 1649	29.78	19	OVC	180	10	OVC	180	10	OVC	180	10	OVC	180	10	OVC	180	10	OVC	180	10	OVC	180
22	SCT	120	SUNRISE: 0714	47	43	45	86	9	07	SUNSET: 1649	29.68	22	OVC	220	10	OVC	220	10	OVC	220	10	OVC	220	10	OVC	220	10	OVC	220	10	OVC	220	
01	OVC	055	8.00	SUNRISE: 0713	54	49	51	83	14	29	SUNSET: 1651	29.69	01	OVC	055	10	OVC	055	10	OVC	055	10	OVC	055	10	OVC	055	10	OVC	055	10	OVC	055
04	OVC	100	10.00	SUNRISE: 0713	57	44	50	62	15	29	SUNSET: 1651	29.72	01	OVC	055	10	OVC	055	10	OVC	055	10	OVC	055	10	OVC	055	10	OVC	055	10	OVC	055
07	BKN	110	10.00	SUNRISE: 0713	45	32	39	60	21	29	SUNSET: 1651	29.84	07	OVC	041	10	OVC	041	10	OVC	041	10	OVC	041	10	OVC	041	10	OVC	041	10	OVC	041
10	OVC	150	10.00	SUNRISE: 0713	41	26	35	55	16	33	SUNSET: 1651	29.95	10	OVC	022	10	OVC	022	10	OVC	022	10	OVC	022	10	OVC	022	10	OVC	022	10	OVC	022
13	OVC	200	10.00	SUNRISE: 0713	37	19	31	48	18	34	SUNSET: 1651	29.97	13	OVC	020	10	OVC	020	10	OVC	020	10	OVC	020	10	OVC	020	10	OVC	020	10	OVC	020
16	BKN	200	10.00	SUNRISE: 0713	36	15	26	42	25	31	SUNSET: 1651	30.04	16	OVC	020	10	OVC	020	10	OVC	020	10	OVC	020	10	OVC	020	10	OVC	020	10	OVC	020
19	SCT	050	10.00	SUNRISE: 0713	32	12	26	43	21	34	SUNSET: 1651	30.18	20	OVC	018	10	OVC	018	10	OVC	018	10	OVC	018	10	OVC	018	10	OVC	018	10	OVC	018
22	CLR	NC	10.00	SUNRISE: 0713	28	10	23	47	25	34	SUNSET: 1651	30.26	20	OVC	018	10	OVC	018	10	OVC	018	10	OVC	018	10	OVC	018	10	OVC	018	10	OVC	018
01	CLR	NC	10.00	SUNRISE: 0713	23	6	19	48	25	33	SUNSET: 1651	30.36	01	OVC	100	10	OVC	100	10	OVC	100	10	OVC	100	10	OVC	100	10	OVC	100	10	OVC	100
04	CLR	NC	10.00	SUNRISE: 0713	22	6	18	50	23	33	SUNSET: 1651	30.45	04	OVC	090	10	OVC	090	10	OVC	090	10	OVC	090	10	OVC	090	10	OVC	090	10	OVC	090
07	FEN	046	10.00	SUNRISE: 0713	21	3	17	45	11	36	SUNSET: 1651	30.48	07	BKN	250	10	OVC	250	10	OVC	250	10	OVC	250	10	OVC	250	10	OVC	250	10	OVC	250
10	FEN	048	10.00	SUNRISE: 0713	23	4	18	44	13	34	SUNSET: 1651	30.64	10	SCT	250	10	OVC	250	10	OVC	250	10	OVC	250	10	OVC	250	10	OVC	250	10	OVC	250
13	CLR	NC	10.00	SUNRISE: 0713	27	5	21	39	10	32	SUNSET: 1651	30.64	13	BKN	250	10	OVC	250	10	OVC	250	10	OVC	250	10	OVC	250	10	OVC	250	10	OVC	250
16	CLR	NC	10.00	SUNRISE: 0713	30	6	23	36	14	32	SUNSET: 1651	30.63	16	BKN	250	10	OVC	250	10	OVC	250	10	OVC	250	10	OVC	250	10	OVC	250	10	OVC	250
19	CLR	NC	10.00	SUNRISE: 0713	29	7	23	39	8	34	SUNSET: 1651	30.74	19	BKN	120	10	OVC	120	10	OVC	120	10	OVC	120	10	OVC	120	10	OVC	120	10	OVC	120
22	CLR	NC	10.00	SUNRISE: 0713	29	8	23	41	7	04	SUNSET: 1651	30.74	22	SCT	150	10	OVC	150	10	OVC	150	10	OVC	150	10	OVC	150	10	OVC	150	10	OVC	150
01	BKN	250	10.00	SUNRISE: 0713	26	6	21	46	11	12	SUNSET: 1651	30.70	01	CIR	NC	10	OVC	NC	10	OVC	NC	10	OVC	NC	10	OVC	NC	10	OVC	NC	10	OVC	NC
04	BKN	250	10.00	SUNRISE: 0713	26	10	22	51	6	11	SUNSET: 1651	30.67	04	SCT	250	10	OVC	250	10	OVC	250	10	OVC	250	10	OVC	250	10	OVC	250	10	OVC	250
07	BKN	250	10.00	SUNRISE: 0713	28	13	24																										

OBSERVATIONS AT 3-HOURLY INTERVALS

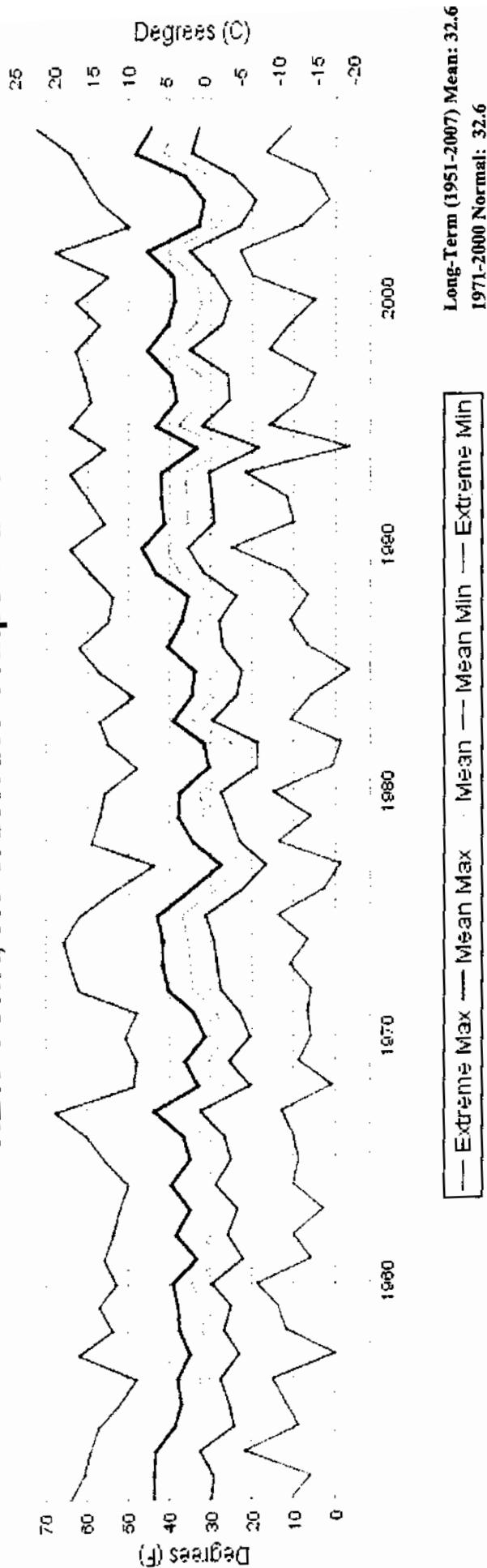
SOURCE: OBSERVATION NOTES
Sky Cover is the amount of the sky obscured. CLR or SKC = 0, FEW = 1/8-2/8,
SCT = 3/8-4/8, BKN = 5/8-7/8, OVC = 8/8, W = Vertical Visibility = 8/8
Ceiling is reported in hundreds of feet above ground level for clouds at or below 12,000 feet.
NC = No Ceiling detected.
& = Original observation contained additional weather elements.
See page 3 for additional notes.

SUMMARY BY HOUR

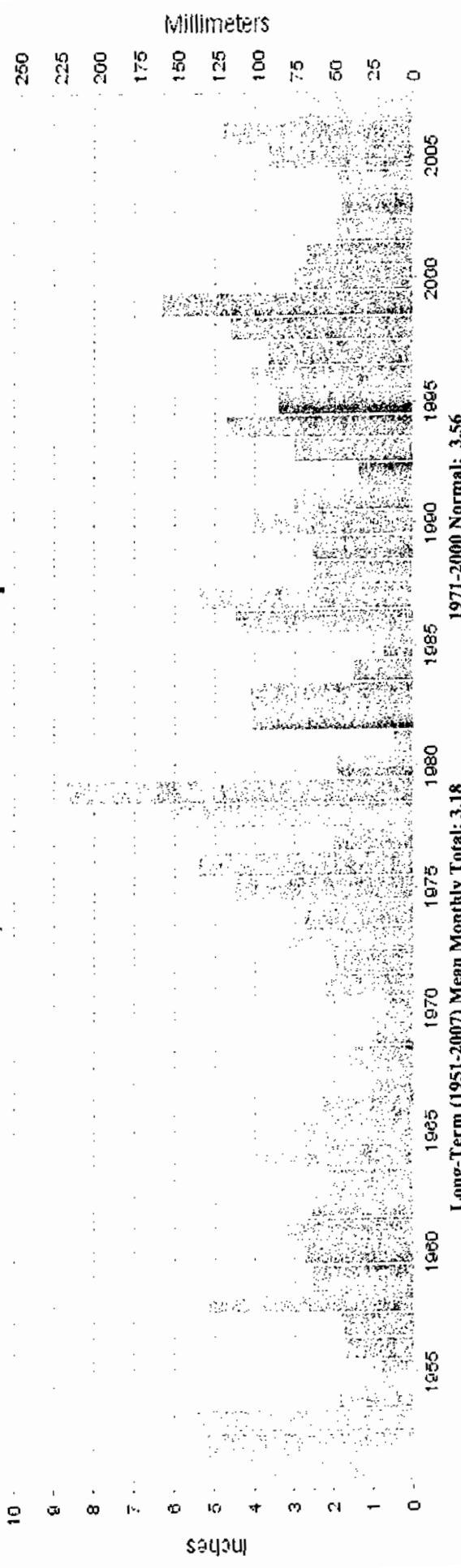
AVERAGES		STATION		SEA LEVEL		VISIBILITY (MILES)		WIND SPEED (MPH)		DIRECTION		RESULTANT WIND (MPH)	
PRESSURE (Inches, HG)		STATION		SEA LEVEL		VISIBILITY (MILES)		WIND SPEED (MPH)		DIRECTION		RESULTANT WIND (MPH)	
01	38	25	34	61	30.02	30.04	8.45	12	6	30	30	30	30
02	38	25	33	62	30.02	30.04	8.90	12	6	30	30	30	30
03	37	26	33	63	30.01	30.04	9.26	11	6	30	30	30	30
04	37	26	33	63	30.01	30.04	9.35	11	6	30	30	30	30
05	37	25	33	63	30.01	30.04	9.32	12	6	30	30	30	30
06	37	25	33	63	30.02	30.04	8.94	12	5	30	30	30	30
07	37	25	33	64	30.03	30.05	8.58	11	6	30	30	30	30
08	36	24	32	63	30.03	30.06	8.66	11	6	30	30	30	30
09	37	25	33	62	30.04	30.07	8.84	12	7	30	30	30	30
10	38	25	34	59	30.04	30.07	9.06	12	8	29	29	29	29
11	40	24	34	56	30.03	30.06	9.23	13	9	29	29	29	29
12	41	24	35	53	30.01	30.03	9.10	13	10	29	29	29	29
13	41	24	35	52	29.98	30.01	8.85	13	9	29	29	29	29
14	42	23	35	50	29.97	30.00	8.96	13	8	29	29	29	29
15	42	23	35	49	29.97	30.00	9.02	13	9	29	29	29	29
16	42	23	35	49	29.98	30.00	8.76	13	9	29	29	29	29
17	41	23	35	50	29.99	30.02	8.76	12	9	29	29	29	29
18	41	23	35	52	30.01	30.04	8.98	11	9	29	29	29	29
19	41	24	35	53	30.02	30.05	8.98	11	8	29	29	29	29
20	40	24	34	54	30.02	30.05	9.03	12	8	29	29	29	29
21	39	23	34	55	30.02	30.05	8.98	11	7	30	30	30	30
22	39	24	34	56	30.03	30.06	8.76	11	7	30	30	30	30
23	38	23	33	57	30.03	30.06	8.65	11	7	30	30	30	30
24	38	24	33	58	30.02	30.05	8.61	12	7	30	30	30	30

PAGE 6

NEW YORK, NY JANUARY Temperatures



NEW YORK, NY JANUARY Precipitation





JANUARY 2007
NEW YORK, NY

LOCAL CLIMATOLOGICAL DATA NOAA, National Climatic Data Center

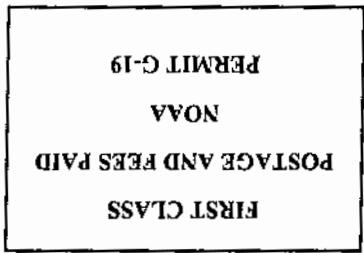
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EXHIBIT E

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(212) 267-9222
Attorneys for Respondent
DENNIS KIRBY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
IN THE MATTER OF THE COMPLAINT

07 CIV 3840 (RWS)

of

**RESPONSE TO
RULE 56.1 STATEMENT
OF UNDISPUTED
MATERIAL FACTS**

DONJON MARINE CO., INC., as Owner
Of Tug WILLIAM E. for Exoneration from
or Limitation of Liability,

Petitioner.

Respondent/Claimant, DENNIS KIRBY, by his attorney, GORAYEB & ASSOCIATES, P.C., as and for his Local Rule 56.1 Response to Statement of Undisputed Material Facts states as follows:

1. Admits.
2. Admits that Caddell Dry Dock and Repair Co., Inc. is a full service vessel repair facility with 6-dry docks located on the waterfront. (See, Kalil Affidavit)
3. Admits.
4. Admits.
5. Admits.
6. Admits.

7. Denies. (See, Affidavit of Dennis Kirby). Also, this statement contains no citation to evidence in violation of FRCP 56(e) and Local Civil Rule 56.1.
8. Admits.
9. Admits.
10. Admits.
11. Admits.
12. Admits.
13. Admits.

Dated: New York, New York
January 3, 2008

GORAYEB & ASSOCIATES, P.C.
Attorney for Respondent
DENNIS KIRBY

By: 

Mark H. Edwards (ME 7106)
100 William Street, Suite 1205
New York, New York 10017
(212) 267-9222
Our File No: 7401

EXHIBIT F

Mark H. Edwards (ME 7106)
GORAYEB & ASSOCIATES, P.C.
Attorney for Claimant/Respondent
DENNIS KIRBY
100 William Street, Suite 1205
New York, New York 10038
(212) 267-9222

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
IN THE MATTER OF THE COMPLAINT

07 CV 3840 (RWS)(DFE)

of

DONJON MARINE CO., INC. as
owner of Tug WILLIAM E. for
Exoneration from or Limitation of
Liability,

**PROPOSED AMENDED
CLAIM OF RESPONDENT
DENNIS KIRBY AND
ANSWER TO PETITIONER'S
VERIFIED COMPLAINT**

A JURY TRIAL IS DEMANDED

Petitioner.

-----x

Claimant/Respondent, DENNIS KIRBY, by his attorney, Gorayeb & Associates, P.C., as and for his Claim and Answer to the Verified Complaint for Exoneration from or Limitation of Liability of Petitioner, DONJON MARINE CO., INC., alleges, upon information and belief, as follows:

CLAIM

1. That on January 31, 2007, Petitioner DONJON MARINE CO., INC. owned the Tug, "William E."
2. On January 31, 2007, the "William E." was in dry dock at Caddell Dry Dock and Repair Co., Inc., located at or about Dry Dock 3, at Richmond Terrace and Broadway, Staten Island, New York, for renovation, sandblasting, painting,

alteration, repair and/or other and/or additional work, labor and services.

3. On January 31, 2007, DENNIS KIRBY, an employee of Caddell Dry Dock and Repair Co., Inc., was performing local land-based sandblasting of said "William E." in connection with said work.

4. The work that DENNIS KIRBY was performing on the "William E." constituted work on a "structure" pursuant to the substantive law of the State of New York.

5. During the performance of his work on January 31, 2007, DENNIS KIRBY was required to work at an elevated height and in the process was required to use a ladder to perform said work.

6. That Petitioner knew and/or should have known that DENNIS KIRBY would be required to work at a significant elevated height in order to perform the required work and that proper safety equipment and procedures would be required to perform said work, which were not provided to him.

7. On January 31, 2007, while performing said work at a significant elevated height on a ladder, the ladder moved and caused DENNIS KIRBY to fall to the ground and sustain serious personal injuries and was otherwise damaged. The ladder upon which he was working failed to prevent, or break his fall.

8. DENNIS KIRBY was injured as a result of and including but not limited to the privity, knowledge, negligence (based on 33 U.S.C. 905(b), 33 U.S.C. 933, federal common law negligence and state common law negligence) and strict liability of Petitioner, its, agents, servants and/or employees, Petitioner's violation of Rule 23 of the Industrial Code of the State of New York [12 NYCRR 23] and

Petitioner's violation of Sections 200, 240(1) and 241(6) of the Labor Law of the State of New York and/or the violation of other applicable statutes, rules and industry standards.

9. DENNIS KIRBY has sustained serious personal injuries, including those physical, mental and emotional in nature and has otherwise been damaged for which he seeks past and future compensation in a monetary amount to be determined by the trier of fact and he demands judgment thereon, together with interest, costs and disbursements.

10. Claimant DENNIS KIRBY makes this claim with a reservation of rights and without waiver of his right to proceed against Petitioner in his prior pending suit [07 Civ. 3742 (RWS)] against Petitioner, upon such terms as the Court deems proper and just.

ANSWER TO COMPLAINT

11. Answering Claimant/Respondent denies knowledge and information sufficient to form a belief as to the allegations of Paragraph "1," and respectfully refers questions of law to the Court.

12. Answering Claimant/Respondent denies knowledge and information sufficient to form a belief as to the allegations of Paragraph "2," except admits that DONJON MARINE CO., INC. has an office and place of business at 1250 Liberty Avenue, Hillside, New Jersey.

13. Answering Claimant/Respondent denies knowledge and information sufficient to form a belief as to the allegations of Paragraph "3," except admits that

Petitioner was the owner of the Tug "William E." on January 31, 2007.

14. Answering Claimant/Respondent admits that Petitioner was served with the State Court action as alleged in Paragraph "4."

15. Answering Claimant/Respondent admits the allegations contained in Paragraph "5," to the extent that they refer to DENNIS KIRBY.

16. Answering Claimant/Respondent denies the allegations contained in Paragraph "6."

17. Answering Claimant/Respondent denies knowledge and information sufficient to form a belief as to the allegations contained in Paragraph "7" as to the value of the Tug "William E.," but admits that Claimant/Respondent's claim(s) for injury(s) and damages will exceed the value of \$95,000.

18. Answering Claimant/Respondent denies knowledge and information sufficient to form a belief as to the allegations contained in Paragraph "8" as to the value of the Tug "William E.," but admits that a purported and conclusory statement has been submitted from an alleged marine consultant that appears to be an appraisal.

19. Answering Claimant/Respondent denies knowledge and information sufficient to form a belief as to the allegations contained in Paragraph "9" as to the value of the Tug "William E.," and further denies knowledge and information sufficient to form a belief that \$95,000 is not less than Petitioner's interest in said Tug and further denies knowledge and information sufficient to form a belief as to the absence of pending freight.

20. Answering Claimant/Respondent admits Paragraph "10" that venue is

proper.

21. Answering Claimant/Respondent denies the allegations contained in Paragraph "11," as to DENNIS KIRBY, and further denies knowledge and information sufficient to form a belief as to the remaining allegations contained therein and respectfully refers questions of law to the Court.

22. Answering Claimant/Respondent denies knowledge and information sufficient to form a belief as to the allegations contained in Paragraph "12," and Petitioner's entitlement thereto and respectfully refers questions of law to the Court.

23. Answering Claimant/Respondent denies knowledge and information sufficient to form a belief as to the allegations contained in Paragraph "13," and respectfully refers questions of law to the Court.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

24. The Complaint fails to state a cause of action and/or petitioner is not entitled to the relief requested.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

25. In addition to the negligence claims based on 33 U.S.C. 905(b), 33 U.S.C. 933 and federal common law standards, the substantive law of the State of New York is applicable to, including Petitioner's violation of Rule 23 of the Industrial Code of the State of New York [12 NYCRR 23] and Petitioner's violation of Sections 200, 240(1) and 241(6) of the Labor Law of the State of New York and/or the violation of other applicable statutes, rules and industry standards

WHEREFORE, it is respectfully requested that DENNIS KIRBY be compensated in a monetary amount commensurate with the injuries and damages that he sustained, to be determined by the trier of fact, and that judgment be entered thereon and further, that Petitioner's Complaint be dismissed in its entirety as against DENNIS KIRBY.

Dated: New York, NY
January 3, 2008

GORAYEB & ASSOCIATES, P.C.
Attorney for DENNIS KIRBY

BY: 

Mark H. Edwards (ME 7106)
100 William Street, Suite 1205
New York, New York 10038
(212) 267-9222
File No.: 7401-LL/MU

TO: RUBIN, FIORELLA & FRIEDMAN LLP
Attorney for DONJON MARINE CO., INC.
292 Madison Avenue
New York, New York 10017
(212) 953-2381
File No.: 609-8731

VERIFICATION

MARK H. EDWARDS, an attorney at law, duly admitted to practice in the Courts of this State, affirms under the penalties of perjury that:

I am associated with the law firm of GORAYEB & ASSOCIATES, P.C., attorney for the claimant and respondent in the above entitled action; that affirmant has read the foregoing **PROPOSED AMENDED CLAIM and ANSWER** and knows the contents thereof; that the same is true to affirmant's own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters affirmant believes it to be true and the reason that this verification is not made by claimant/respondent and is made by affirmant is that claimant and respondent is not presently in the county where the attorney for the claimant and respondent has its office.

Affirmant further says that the source of affirmant's information and the grounds of Affirmant's belief as to all matters not stated upon affirmant's knowledge are from investigations made on behalf of said claimant and respondent.

Dated: New York, New York
 January 3, 2008



MARK H. EDWARDS (ME 7106)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
DENNIS KIRBY,

**PROPOSED AMENDED
VERIFIED COMPLAINT**

Plaintiff,

Index No.:

-against-

DONJON MARINE CO., INC.,

Defendant.

-----X

Plaintiff, **DENNIS KIRBY**, by his attorney, **GORAYEB & ASSOCIATES, P.C.**, complaining of the defendant, respectfully alleges, upon information and belief, as follows:

1. That plaintiff was and still is a resident of the State of New York, County of Bronx.
2. That this action falls within one or more of the exemptions set forth in CPLR §1602.
3. That at all times hereinafter mentioned, the defendant, **DONJON MARINE CO., INC.** (hereinafter "**DONJON**"), was and still is a domestic corporation organized and existing under and by virtue of the Laws of the State of New York.
4. That at all times hereinafter mentioned, **DONJON**, was and still is a partnership organized and existing under and by virtue of the Laws of the State of New York.
5. That at all times hereinafter mentioned, and upon information and belief, **DONJON**, was and still is a foreign corporation authorized to do business under and by virtue of the Laws of the State of New York.
6. That at all times hereinafter mentioned, and upon information and belief, **DONJON**, maintained a principal place of business in the State of New Jersey

with its principle place of business at 1250 Liberty Avenue, Hillside, New Jersey 07205.

**AS AND FOR A FIRST CAUSE OF ACTION
ON BEHALF OF THE PLAINTIFF DENNIS KIRBY**

7. Plaintiff, **DENNIS KIRBY**, repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "6" together with the same force and effect as though same were more fully set forth at length herein.
8. That on January 31, 2007, **DONJON**, owned the property located at Dry Dock 3 located at Richmond Terrace and Broadway, Staten Island, New York.
9. That on January 31, 2007, DONJON owned a vessel known as or named "William E."
10. That on January 31, 2007, the "William E" was in dry dock at Caddell Dry Dock and Repair Co., Inc.
11. That on January 31, 2007, the "William E" was in dry dock #3 at Caddell Dry Dock and Repair Co., Inc.
12. That on January 31, 2007, **DONJON**, owned a vessel or structure located at Dry Dock 3 located at Richmond Terrace and Broadway, Staten Island, New York
13. That on January 31, 2007, **DONJON**, maintained a vessel or structure located at Dry Dock 3 located at Richmond Terrace and Broadway, Staten Island, New York.
14. That on or prior to January 31, 2007, the "William E" was transported to Caddell Dry Dock and Repair Co., Inc., on Staten Island for renovation, refitting, painting and/or repair.
15. That on or prior to January 31, 2007, **DONJON**, was hired and/or retained to act as a contractor for the refitting, renovation, painting, repair and/or alteration

of a vessel known as "William E" at Dry Dock 3 located at Richmond Terrace and Broadway, Staten Island, New York.

16. That on or prior to January 31, 2007, **DONJON**, entered into an agreement and contract by which **CADDELL DRY DOCK AND REPAIR CO, INC.** was to provide certain work, labor, painting, renovation and/or repairs with respect to certain renovation, alterations and/or repairs of its vessel, the "William E".
17. That on or prior to January 31, 2007, **DONJON** entered into an agreement and contract by which **CADDELL DRY DOCK AND REPAIR CO., INC.** was to provide certain work, labor, painting, renovation and/or repairs to a vessel it owned at Dry Dock 3 located at Richmond Terrace and Broadway, Staten Island, New York.
18. That on or prior to January 31, 2007, **DONJON** retained a contractor to perform renovation, painting, repair and/or alteration of a vessel at Dry Dock 3 located at Richmond Terrace and Broadway, Staten Island, New York.
19. That on or prior to January 31, 2007, **DONJON** retained **CADDELL DRY DOCK AND REPAIR CO., INC.** to provide work, labor and/or services at the vessel at Dry Dock 3 located at Richmond Terrace and Broadway, Staten Island, New York.
20. That at all times hereinafter mentioned, and on, or prior to January 31, 2007, **DONJON** hired and/or retained **CADDELL DRY DOCK AND REPAIR CO., INC.** pursuant to a written contract and/or agreement a contractor.
21. That on January 31, 2007, renovation, refitting, painting, alterations and/or repairs were being performed on the "William E" at Dry Dock 3 located at the premises of **CADDELL DRY DOCK AND REPAIR CO., INC.**
22. That on January 31, 2007, renovation, painting, repair and/or alterations were being performed on a vessel known as "William E" at Dry Dock 3 located at Richmond Terrace and Broadway, Staten Island, New York.

23. That on January 31, 2007, plaintiff was engaged in the performance of renovation, refitting, painting, repair and/or alterations on said vessel.
24. That the Defendant, its agents, servants and/or employees had the duty to provide the Plaintiff with a safe place to work.
25. That the Defendant, its agents, servants and/or employees had the non-delegable duty to see that the work site was kept reasonably safe and free of dangers and hazards to those workers lawfully thereat.
26. That on January 31, 2007, while plaintiff **DENNIS KIRBY**, was lawfully and carefully working on a ladder on said vessel, he was caused to fall from said ladder by reason of the negligence and/or violation of statute of the defendant, its agents, servants and/or employees in the ownership, operation, direction, supervision, possession, control, construction, repair, rehabilitation, refitting, painting and/or alteration of the said vessel sustaining the injuries hereinafter alleged.
27. That the defendant, its agents, servants and/or employees were negligent, reckless and careless in the ownership, operation, repair, control, possession, supervision, direction, construction, inspection, management, renovation, rehabilitation, refitting and/or alteration of the said vessel in that they failed to provide the plaintiff with a safe place to work; failed to provide the plaintiff with a hazard-free work place; failed to provide the plaintiff with proper and safe elevated working surfaces, scaffolds and ladders, so fixed, secured and/or maintained and braced so as to prevent the plaintiff from falling from same; failed to provide the plaintiff with proper and approved safety devices so placed, fixed and/or secured so as to afford proper protection to the plaintiff working thereat; violated the applicable provisions of the Labor Law of the State of New York, the Industrial Code of the State of New York and the provisions of the Occupational Safety & Health Administration as they pertain to construction;

failed to inspect the work areas on the date of the accident and prior thereto to see that the elevated working surfaces, scaffolds and ladders were safe; and, failed to provide the plaintiff with any safety devices to prevent plaintiff from falling from said elevated working surfaces, scaffolds and ladders.

28. That the defendant, its agents, servants and/or employees had actual and/or constructive notice of the dangerous and defective conditions existing upon the work site.
29. That the accident and the injuries resulting therefrom were caused solely and wholly by reason of the negligence of the defendant, its agents, servants and/or employees without any fault, want of care or culpable conduct on the part of the plaintiff contributing thereto.
30. That by reason of the foregoing, the plaintiff has been rendered sick, sore, lame maimed and disabled and so remains. That he has been unable to attend to his usual vocation and activities and that he has been obliged to expend and will expend in the future, sums of money for medical aid and attention, all to his damage in an amount that exceeds the jurisdictional limits of all lower courts.

**AS AND FOR A SECOND CAUSE OF ACTION
ON BEHALF OF THE PLAINTIFF DENNIS KIRBY**

31. Plaintiff, **DENNIS KIRBY**, repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "29" together with the same force and effect as though same were more fully set forth at length herein.
32. That on January 31, 2007, there existed in full force and effect within the State of New York, Sections 200, 240(1) and 241(6) of the Labor Law of the State of New York.
33. That the defendant had the duty to comply with the provisions of sections 200, 240(1), and 241(6) of the Labor Law of the State of New York.
34. That said defendant violated Sections 200, 240(1) and 241(6) of the Labor Law

of the State of New York.

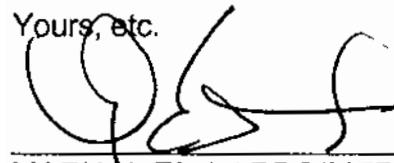
35. That on January 31, 2007, there existed Rule 23 of the Industrial Code of the State of New York.
36. That the defendant had the duty to comply with the provisions of Rule 23 of the Industrial Code of the State of New York.
37. That by reason of the negligence of the defendant aforesaid, the defendant violated Rule 23 of the Industrial Code of the State of New York.
38. That by reason of the foregoing, the plaintiff has been rendered sick, sore, lame maimed and disabled and so remains. That he has been unable to attend to his usual vocation and activities and that he has been obliged to expend and will expend in the future, sums of money for medical aid and attention, all to his damage in an amount that exceeds the jurisdictional limits of all lower courts.

**AS AND FOR A THIRD CAUSE OF ACTION
ON BEHALF OF THE PLAINTIFF DENNIS KIRBY**

39. Plaintiff, DENNIS KIRBY, repeats, reiterates and realleges each and every allegation contained in Paragraphs "1" through "38" together with the same force and effect as though same were more fully set forth at length herein.
40. Plaintiff asserts a violation of 33 U.S.C. 905(b) and 33 U.S.C. 933 and asserts negligence against defendant based on federal and state common law negligence.

WHEREFORE, the plaintiff **DENNIS KIRBY** demands judgment against the defendant in an amount that exceeds the jurisdictional limits of all lower courts on each cause of action, with costs, interest and disbursements.

Dated: New York, New York
 January 3, 2008

Yours, etc.


MARK N. EDWARDS(ME7106)
GORAYEB & ASSOCIATES, P.C.
Attorney for Plaintiff
DENNIS KIRBY
100 William Street
New York, New York 10038
(212) 267-9222
File#/7401 - LLMU

ATTORNEY'S VERIFICATION

CHRISTOPHER J. GORAYEB, an attorney duly admitted to practice before the Courts of the State of New York, affirms the following to be true under the penalties of perjury:

I am a member of the law firm of GORAYEB & ASSOCIATES, P.C., attorney of record for plaintiff, I have read the annexed **PROPOSED AMENDED COMPLAINT** and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon facts, records, and other pertinent information contained in my files. The reason this verification is made by me and not Plaintiff is that Plaintiff does not reside in the county wherein the attorney for the plaintiff maintain its offices.

DATED: New York, New York
January 3, 2008



MARK H. EDWARDS

STATE OF NEW YORK
COUNTY OF NEW YORK

SS.: **AFFIDAVIT OF SERVICE**

I, MARK H. EDWARDS, being duly sworn, depose and say: I am not a party to the action, am over 18 years of age, and reside in the County of Mercer, State of New Jersey.

On January 03, 2008, I served the within **NOTICE OF CROSS-MOTION WITH OPPOSITION TO PETITIONER'S SUMMARY JUDGMENT MOTION, ATTORNEY'S AFFIDAVIT, AFFIDAVIT OF DENNIS KIRBY, EXHIBITS AND MEMORANDUM OF LAW** to the Federal Express office location at 100 William Street, New York, New York, for overnight delivery service on the following attorneys:

RUBIN, FIORELLA & FRIEDMAN, LLP
292 Madison Avenue
New York, New York 10017



MARK H. EDWARDS

Sworn to before me on
January 03, 2008

Notary Public

CHRISTOPHER A. COOPER
NOTARY PUBLIC, State of New York
No. 31-4958630

Qualified in New York City
Commission Expires Nov. 8, 2009

FedEx
Tracking
Number

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1 From Please print and press hardDate 1/3/08 Sender's FedEx
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Dept/Room/Suite/Room

City NEW YORK

State NY ZIP 10038-5095

2 Your Internal Billing Reference

First 24 characters will appear on invoice

Dennis Kirby

3 To

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Phone ()

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4a Express Package Service

XXX FedEx Priority Overnight

Next business morning* Friday
Shipments will be delivered on Monday
unless SATURDAY Delivery is selected.

FedEx Standard Overnight

Next business afternoon* Saturday
Delivery NOT available.

Packages up to 150 lbs.

FedEx First Overnight
Excludes next business morning
Delivery to selected locations*
Saturday Delivery NOT available.

FedEx 2Day

Second business day* Thursday
Shipments will be delivered on Monday
unless SATURDAY Delivery is selected.

FedEx Express Saver

Third business day*
Saturday Delivery NOT available.
FedEx envelope rates not available. Minimum charge, One-pound rate.* To most locations

4b Express Freight Service

FedEx 1Day Freight*

Next business day** Friday
Shipments will be delivered on Monday
unless SATURDAY Delivery is selected.

FedEx 2Day Freight

Second business day** Thursday
Shipments will be delivered on Monday
unless SATURDAY Delivery is selected.

Packages over 150 lbs.

FedEx 3Day Freight
Third business day**
Saturday Delivery NOT available.* Call for Confirmation** To most locations

5 Packaging

 FedEx Envelope* FedEx Pak* FedEx Large Pak FedEx Small Pak FedEx Box FedEx Tube FedEx Other* Declared value limit \$200.

6 Special Handling

SATURDAY Delivery

NOT Available for
FedEx Standard Overnight,
FedEx First Overnight, FedEx Express
Saver, or FedEx 3Day Freight.HOLD Weekday
at FedEx LocationNOT Available for
FedEx First Overnight
Does this shipment contain dangerous goods?HOLD Saturday
at FedEx LocationAvailable ONLY for
FedEx Priority Overnight and
FedEx 2Day to selected locations.One box must be checked. No Yes Yes
Per package
Shipper's Declaration
not required Dry Ice Dry Ice, UN 1845 Cargo Aircraft OnlyUN 1845, IATA 485, ICAO 20007 Payment Bill to:

Enter FedEx Acct. No. or Credit Card No. below.

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Credit Card No.Ex.
Date

Total Packages Total Weight Total Declared Value*

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Required Direct Signature
Required Indirect Signature
Required

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF THE COMPLAINT

07 CV 3840 (RWS)

of

DONJON MARINE CO., INC., as
Owner of Tug WILLIAM E. for
Exoneration from or Limitation of
Liability,

Petitioner.

**NOTICE OF CROSS-MOTION WITH OPPOSITION TO PETITIONER'S SUMMARY
JUDGMENT MOTION, ATTORNEY'S AFFIDAVIT, AFFIDAVIT OF DENNIS KIRBY
AND EXHIBITS**

GORAYEB & ASSOCIATES, P.C.

Attorney for Respondent

DENNIS KIRBY

100 William Street, Ste. 1205

New York, New York 10038

(212) 267-9222

FILE NO. 7401 - LL

Dated: New York, New York
January 03, 2008



Mark H. Edwards (ME7106)